

Notice of Allowability

Application No.

10/088,350

Examiner

Keith Hendricks

Applicant(s)

SEPULCHRE ET AL.

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment of 12-15-04.
2. ☒ The allowed claim(s) is/are 10-16.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date Dec. 2004
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

(i) In the specification (6/14/2002):

At page 7 of the specification,

- Please delete "Figure 1", and insert therein --- Figures 1A-1B ---.
- Please delete "Figure 2", and insert therein --- Figures 2A-2B ---.
- Please delete "Figure 3", and insert therein --- Figures 3A-3B ---.
- Please delete "Figure 4", and insert therein --- Figures 4A-4B ---.
- Please delete "Figure 5", and insert therein --- Figures 5A-5C ---.
- Please delete "Figure 6", and insert therein --- Figures 6A-6C ---.

(ii) Please cancel page 26 of the specification, which previously served as an unnecessary description of the drawing legend in relation to the foreign language priority document.

(iii) After the claims, please delete the previously-submitted abstract (cover of the WO document) and insert therein the attached abstract on a separate sheet.

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Conclusion

The following is an examiner's statement of reasons for allowance:


The rejection over Tinson et al. has been withdrawn, in light of applicant's arguments submitted December 15, 2004. Tinson et al. does utilize a urease-negative (i.e. one which is incapable of hydrolyzing urea) *Streptococcus thermophilus* strain in a process of cheese making, as is part of the instantly-claimed invention. However, the reference does not teach or suggest fulfilling the claim limitation of "obtaining... an acidification kinetic which is substantially independent of the content of the milk in terms of its constituents which are involved in the metabolism of urea." As applicant has correctly pointed out, since the reference utilized strains which were urease-negative, one would expect to find urea as one of the end product compounds in the culture due to normal fermentation processes. However, no urea was found. Therefore, this result must have been due to the presence of other factors and metabolic pathways, possibly including the presence and activity of unintentional urease-positive bacteria within the culture. Regardless of the source of such activity, this demonstrates that the reference was not capable of achieving such a fermentative process (acidification kinetic) without involving the metabolism of urea. The reference was a research paper investigating this process, and thus provided no suggestion that this was desirable beyond that which was already attempted, nor did the reference provide any teaching or suggestion of how one of ordinary skill in the art would achieve such a result, as instantly claimed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (571) 272-1401. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


KEITH HENDRICKS
PRIMARY EXAMINER

Abstract of the Disclosure

The invention relates to the use of at least one strain of *Streptococcus thermophilus* which is incapable of hydrolyzing urea in the manufacture of cheese or fermented dairy products such as yoghurts in order to obtain an acidification kinetic which is independent from the content of various components of the milk.